

HOUSE BILL 4174

By Turner M

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 49; Title 56; Title 63; Title 68 and Title 71,
and to enact the "Tennessee Pregnant Women
Support Act".

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 68, is amended by inserting Sections 2 through 8 below as a new chapter thereto to be designated as Chapter 60.

SECTION 2. This act shall be known and may be cited as, the "Tennessee Pregnant Women Support Act".

SECTION 3. The department of health is authorized to and shall apply for any available federal grants providing for the collection of data regarding the number of abortions performed in this state, the characteristics of those seeking abortions, the reasons why women choose abortion, or any other information applicable to supporting pregnant women in this state who may be seeking an abortion.

SECTION 4.

(a) The department of health shall develop a comprehensive informational pamphlet for distribution upon request to Tennessee licensed physicians. On or after January 1, 2009, every licensed physician in this state shall provide such pamphlet to any woman to whom the physician provides an abortion or provides information concerning a possible abortion.

(b) The pamphlet described in subsection (a) shall contain:

(1) A list of public and private health care services available to women during pregnancy and after the birth of a child;

(2) Public and private adoption resources available in the state, including but not limited to the surrender of an infant without criminal liability pursuant to § 68-11-255; and

(3) Public and private services available, pursuant to Title X of the federal Public Health Service Act, to assist women in preventing future pregnancies.

(c) The pamphlet shall contain the name, address and telephone number of public and private organizations, health care facilities, or other persons providing these services; provided, that the commissioner of health may promulgate such rules in the commissioner's discretion as are necessary for any public or private organization, health care facility, or other person to qualify for inclusion in the pamphlet.

(d) The department shall make the pamphlet available to physicians no later than January 1, 2009.

SECTION 5.

(a) The department of health shall develop a toll-free telephone hotline for pregnant women or other interested parties to obtain information about:

(1) Public and private health care services available to women during pregnancy and after the birth of a child;

(2) Public and private adoption resources available in the state, including but not limited to the surrender of an infant without criminal liability pursuant to § 68-11-255; and

(3) Public and private services available, pursuant to Title X of the federal Public Health Service Act, to assist women in preventing future pregnancies.

(b) The department shall operate the toll-free telephone hotline no fewer than eight (8) hours per day for no fewer than five (5) days per week, during normal business

hours, and shall publicize the hotline through the use of media which may include radio, television, newspaper, billboard or other advertisements.

(c) The commissioner of health may promulgate such rules, in the commissioner's discretion, as are necessary for any public or private organization, health care facility, or other person to qualify for inclusion in the information distributed pursuant to the hotline.

(d) The department shall make the hotline available no later than January 1, 2009.

SECTION 6.

(a) There is hereby created in the general fund an account to be known as the "Tennessee pregnant women support fund", hereinafter known as "the fund", as a special nonreverting fund. Funds appropriated from the Tennessee pregnant women support fund shall be administered by the department of health to support women and families who are facing unplanned pregnancy.

(b) The department is authorized to solicit gifts, donations, bequests and grants on behalf of the fund from any source and to deposit all moneys received in the fund. The commissioner shall submit to the governor an annual report of all gifts, donations, grants and bequests accepted; the names of the donors; and the respective amounts contributed by each donor.

(c) All moneys received from any source pursuant to subsection (b) shall be credited to the fund. Interest earned on moneys in the fund shall remain in the fund and be credited to it. Any moneys remaining in the fund, including interest thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the fund. Moneys in the fund shall be used solely for the purposes of carrying out the activities enumerated below:

(1) Purchasing or upgrading ultrasound equipment for the benefit of any public health program or private health provider in this state;

(2) Creating a separate program within the department to address domestic violence, dating violence, sexual assault and stalking against pregnant women and new mothers;

(3) Conducting the campaign outlined in this chapter to increase public awareness of public and private resources available to pregnant women in this state;

(4) Providing support services for students of institutions of higher education in this state who are pregnant;

(5) Providing funds to allow early childhood education programs to work with pregnant or parenting teens to complete high school and provide job training education;

(6) Providing education on the health needs of infants to teenage or first time mothers through free home visits by registered nurses;

(7) Collecting, synthesizing and disseminating current scientific information relating to down syndrome or other prenatal diagnosed conditions; or

(8) Coordinating the provision of, and access to, new or existing supportive services for patients receiving a positive test diagnosis for down syndrome or other prenatally diagnosed conditions.

(d) The department shall establish an application process and related procedures for community health centers, migrant health centers, homeless health centers, public-housing centers, or any other public or private entity seeking grants from the fund. A grant may be made only if an application for the grant is submitted to the department in such manner as specified by the department pursuant to rule.

SECTION 7.

(a) For purposes of this section, unless the context otherwise requires:

(1) “Down syndrome” means a chromosomal disorder caused by an error in cell division that results in the presence of an extra whole or partial copy of chromosome 21;

(2) “Health care provider” means a person who is licensed, certified or otherwise authorized or permitted by the laws of this state to administer health care in the ordinary course of business or practice of a profession;

(3) “Prenatally diagnosed condition” means any fetal health condition identified by prenatal genetic testing or prenatal screening procedures; and

(4) “Prenatal test” means diagnostic or screening tests offered to pregnant women seeking routine prenatal care that are administered by a health care provider based on medical history, family background, ethnic background, previous test results, or other risk factors.

(b) Upon receipt of a positive test result from a prenatal test for down syndrome or other prenatally diagnosed conditions performed on a patient, the health care provider involved or the health care provider’s designee shall provide the patient with the following:

(1) Up-to-date, scientific, written information concerning the life expectancy, clinical course, and intellectual and functional development and treatment options for an unborn child diagnosed with or child born with down syndrome or other prenatally diagnosed condition; and

(2) Referral to supportive services providers, including information hotlines specific to down syndrome or other prenatally diagnosed conditions, resource centers, and other education and support programs.

SECTION 8.

(a) The department of health shall develop a comprehensive adoption awareness and assistance program whereby:

(1) Available resources are identified to assist pregnant women who intend to carry their pregnancy to term or to assist new parents, or both; and

(2) An advertising campaign developed and implemented to increase public awareness of the resources described in subdivision (1) of this section.

(b) Notwithstanding the provision of subsection (a), the department of health shall not direct people to an organization or adoption center that is for-profit.

(c) The commissioner of health may promulgate such rules in the commissioner's discretion as are necessary for any public or private organization, health care facility, or other person to qualify for inclusion in the adoption awareness program.

SECTION 9. Tennessee Code Annotated, Section 39-15-202, is amended by deleting such section in its entirety and by substituting instead the following:

(a) An abortion otherwise permitted by law shall be performed or induced only with the informed written consent of the pregnant woman, given freely and without coercion. Such consent shall be treated as confidential.

(b) In order to ensure that a consent for an abortion is truly informed consent, an abortion shall be performed or induced upon a pregnant woman only after she has been informed by her attending physician or other appropriate health care professional of the following facts and has signed a consent form acknowledging that she has been informed as follows:

(1) That according to the best judgment of the attending physician or other health care professional she is pregnant;

(2) The number of weeks elapsed from the probable time of the conception of her unborn child, based upon the information provided by her as to the time of her last menstrual period or after a history, physical examination, and appropriate laboratory tests;

(3) That if more than twenty-four (24) weeks have elapsed from the time of conception, her child may be viable, that is, capable of surviving outside of the womb, and that if such child is prematurely born alive in the course of an abortion her attending physician has a legal obligation to take steps to preserve the life and health of the child;

(4) That numerous public and private agencies and services are available to assist her during her pregnancy and after the birth of her child, if she chooses not to have the abortion, whether she wishes to keep her child or place the child for adoption, and that she will be provided with a list of such agencies and the services available if she so requests; and

(5) Numerous benefits and risks are attendant either to continued pregnancy and childbirth or to abortion depending upon the circumstances in which the patient might find herself. These benefits and risks shall be explained to the best of such physician's or health care professional's ability and knowledge of the circumstances involved.

(c) At the same time the woman is given the information required by subsection (b), the physician or other health care professional shall also inform the pregnant woman of the particular risks associated with her pregnancy and childbirth and the abortion or child delivery technique to be employed, including providing her with at least a general description of the medical instructions to be followed subsequent to the abortion or childbirth in order to ensure her safe recovery.

(d)

(1) No abortion shall be performed until twenty-four (24) hours after the physician or other health care provider provides the required information.

(2) A violation of this subsection by a physician, except as provided in subsection (f), is a Class E felony.

(e) The physician performing or inducing the abortion shall provide the pregnant woman with a duplicate copy of the consent form signed by her.

(f) The provisions of this section shall not apply in those situations where an abortion is certified by a licensed physician as necessary to preserve the life or health of the pregnant woman.

SECTION 10. Tennessee Code Annotated, Title 56, Chapter 7, Part 23, is amended by adding the following language as a new, appropriately designated section:

(a) Notwithstanding any other provision of law to the contrary, any individual, franchise, blanket, or group health insurance policy, medical service plan contract, hospital service corporation contract, hospital and medical service corporation contract, fraternal benefit society, health maintenance organization, preferred provider organization, or managed care organization which provides hospital, surgical, or medical expense insurance shall not deny coverage under any such policy, contract, or plan for obstetrical services to a pregnant woman insured on the basis that the pregnancy was a pre-existing condition if such plan otherwise provides coverage for obstetrical services for insureds who become pregnant after enrollment in such policy, contract or plan.

(b) The provisions of this section are applicable to all health benefit policies, programs, or contracts which are offered by commercial insurance companies, nonprofit insurance companies, health maintenance organizations, preferred provider

organizations, and managed care organizations, and which are entered into, delivered, issued for delivery, amended, or renewed after January 1, 2009.

(c) Reimbursement for obstetrical services for insureds who are pregnant at the time of their enrollment shall be determined according to the same formula by which charges are developed for obstetrical services for other insureds. Such coverage shall have durational limits, dollar limits, deductibles, copayments, and coinsurance factors that are no less favorable than for other types of obstetrical services generally.

(d) Nothing in this section shall be construed to prohibit any insurer from providing medical benefits greater than or more favorable to the insured than the benefits established pursuant to this section.

(e) The provisions of this section shall not apply to short term travel policies, short term nonrenewable policies of not more than six (6) months' duration, accident only policies, limited or specific disease policies, contracts designed for issuance to persons eligible for coverage under Title XVIII of the Social Security Act, known as Medicare, or any other similar coverage under state or governmental plans, including the TennCare and Medicaid programs.

SECTION 11. Tennessee Code Annotated, Section 68-3-502, is amended by adding the following new subsection (i) thereto:

The form for a certificate of death shall contain a place for identification of whether the deceased was pregnant at the time of death.

SECTION 12. Tennessee Code Annotated, Title 68, Chapter 5, Part 5, is amended by inserting the following as a new, appropriately designated section thereto:

Any person who offers or provides to a pregnant woman a testing or screening service to detect genetic disorders in that woman's fetus shall inform the woman in a medically and statistically accurate manner of the likelihood that a positive result of such

test or screen might be a false positive. For a person who is a licensed physician or osteopathic physician in this state, a violation of this section may be considered a violation of the practice act governing that person pursuant to title 63, chapter 6 or title 63, chapter 9, respectively. In addition, a violation of this section may be considered a violation of the licensure requirements governing any facility licensed by the department pursuant to this title where the testing or screening service was provided.

SECTION 13. Tennessee Code Annotated, Section 68-11-255, is amended by deleting subsection (a)(1) thereof and by substituting instead the following:

(1) "Facility" means any hospital as defined by § 68-11-201, birthing center as defined by § 68-11-201, community health clinic, outpatient "walk-in" clinic, local department of health clinic, local office of the department of human services, or local fire department or police station.

SECTION 14. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 15. The commissioner of health is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of title 4, chapter 5.

SECTION 16. This act shall take effect July 1, 2008, the public welfare requiring it.